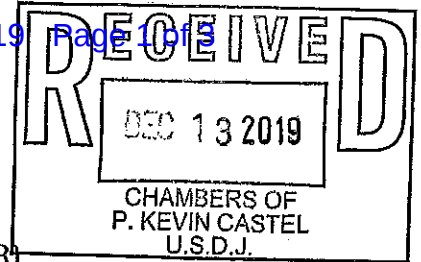


*Leave to amend
motion is GRANTED.
File amended motion
by January 15, 2020.
SO ORDERED*



Motion to Amend Motion to Request Forfeiture Hearing (Doc 388)

United States v. Scott Tucker

16 CR 00091 PKC

Dear Judge Castel:

I was deposed on the forfeiture matter in this case on December 6, 2019, and during that deposition the assistant U.S. attorney, Mr. Ravi, informed me that I would need to amend my motion on my original hearing request as the amount I am seeking in the matter of my share of marital assets has changed. The reason is set forth below beginning in paragraph two.

The government has positioned me in this case as a third party to my own assets. Primary owners of assets are not third parties. Third parties are those asserting an interest in another's property either through mortgages, liens, etc. and they are required to prove their ownership to the court in forfeiture litigation. My marital assets are not third-party transfers. I was never indicted nor convicted of a crime in this case so my share of marital assets should be free from forfeiture, especially since I contributed my own salary toward the marriage for the duration of our marriage, and because funds were co-mingled and because it is not stated anywhere that the seized assets were substitute nor subsequent assets. Property for the purposes of this motion includes all real property as well as monetary funds such as brokerage and bank accounts. I had no knowledge of any crime nor would there have ever been any reason for me to know of any criminal activity. Being married doesn't mean one is privy to a spouse's daily work-related activities.

Primary owners, or first party owners, are not required to prove to the government that they own their own assets. It is the government's responsibility to untangle tainted from untainted assets unless, at the very least, they have been seized under substitute asset seizure as primary owners have protections under the Fourth and 14th Amendments. Regardless, under marital law, half of any assets accumulated over the course of a marriage are jointly owned and again, I have no reason to believe that any of our assets were tainted.

I have a legal right, title and interest in my share of marital property. My right to my share is superior to Mr. Tucker's right to my share (Mr. Tucker and I were divorced October 28, 2019). At the time I obtained my property I had no cause to believe the property was, or would be, subject to forfeiture. In fact, I had read white papers written by Indian tribal expert law firms saying the Tribal business model was legal. Mr. Tucker has previously won two cases brought by the Attorney Generals of California and Colorado where both states' Supreme Courts ruled the model was legal as well.

Mailed to Kim Tucker 12/19/2019

Federal courts have typically looked to state statutes with regard to how marital property is to be divided. Kansas law provides that property in a divorce proceeding is distributed by the rule of "equitable division". This rule provides that instead of mechanistically looking at whose name is listed as the "owner" of property or who "earned" the income used to purchase the property, the court deciding a marriage dissolution case decides how to "fairly and equitably" divide the property accumulated by a married couple in the way determined by the judge after reviewing rules set out in the Kansas statutes. The court is to consider (1) age of the parties; (2) the duration of the marriage; (3) the property owned by the parties; (4) their present and future earning capacities; (5) the time, source and manner of acquisition of property; (6) family ties and obligations; (7) the allowance of maintenance or lack thereof; (8) dissipation of assets; (9) the tax consequences of the property division upon the respective economic circumstances of the parties; and such other factors as the court considers necessary to make a just and reasonable division of property. K.S.A. 1997 Supp. 60-1610(b)(1).

The government continues to assert that I was timely notified of their forfeiture notification and that simply is not true. During the deposition Mr. Ravi asked me about a post office box number that I did not recognize. I told him I have never used a post office box. He then asked me about another address I did not recognize and then asked me if it was my college-age daughter's address. I told him my daughter has only resided with me other than her college dormitory addresses in Boston where she attends college. She has no ties to the address he cited. I have no ties to the post office box he cited. I had moved from the subject property because I could no longer afford to live there and my youngest daughter was having extreme anxiety caused by the early morning assault-rifles-drawn FBI raid on our residence so moving was our best and only course of action. I was not in hiding. I checked my mailbox at the subject property regularly. There was no notification in my mailbox from the government. The government did not exert even the smallest of efforts to notify me. How can sending notification to wrong addresses and not even old addresses, but addresses at which myself nor my daughter have never resided or received mail be a good faith attempt to notify someone you are financially destroying them? It almost seems like their goal was to make sure I was not notified because it is hard to believe that an agency with the resources of the Southern District of New York could make such blatant errors.

Perhaps if I had had access to my funds to engage representation I would have had expert advice that would have guided me through this process and could have told me a notice was forthcoming or provided me with a copy of said notice along with assistance in replying. Unfortunately, my many attempts (including NYLAG and the Johnson County, KS Bar Association) to find representation were futile, as without at least a substantial retainer, no attorneys would agree to represent me.

I have worked for all but three of the last forty years. I am 63 years old. I cannot make up lost savings by starting over and working and saving. It is an impossibility.

The only reason the government has my money to take is because I saved it. At the very least, I should be given fair access to remission or mitigation via CFR 9.5 and representation by a knowledgeable attorney, particularly since I have not been charged with any crime. Even a traffic ticket gets to be fairly adjudicated.

The information contained in the amended motion may be more than is necessary to inform the court of a change, however, since I am not an attorney and am acting pro se, I am trying to get everything on the record and available for my defense.

Respectfully submitted,

Wino Tucker 12-12-19

cc: Kevin Gorman, FSA Senior Law Clerk, SDNY